

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re _____) Case No. 05-30545-C-7
JESSICA V. MORALES,) DC No. JMS-1
Debtor.)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION FOR RELIEF FROM AUTOMATIC STAY**

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

Findings of Fact

Debtor filed this voluntary chapter 7 petition on August 26, 2005. Debtor scheduled real property commonly known as 8719 Vision Place, Louisville, Kentucky ("the property") as an

21

1 asset of the estate. The chapter 7 trustee filed a report
2 finding that there was no property available for distribution
3 from the estate over and above that exempted by debtor.

4 On September 26, 2005, Mortgage Electronic Registration
5 Systems, Inc. ("movant") filed a motion, notice, and
6 declaration requesting that this court vacate the automatic
7 stay to permit movant to commence foreclosure proceedings
8 against the property. The motion and declaration establish
9 that the debtor owes the movant approximately \$119,000. The
10 value of the property is approximately \$129,000.

11 A hearing was scheduled for October 25, 2005 to consider
12 the motion. Upon review of the record, the court decided to
13 submit the matter on the record presented and removed the
14 matter from calendar.

15 16 Conclusions of Law

17 The automatic stay of acts against the debtor in personam
18 and of acts against property other than property of the estate
19 continues until the earliest of the time when the bankruptcy
20 case is closed, dismissed, or an individual in a chapter 7 case
21 is granted a discharge. 11 U.S.C. § 362(c). However, the
22 automatic stay may be terminated earlier if debtor fails to
23 adequately protect the secured party's interest, § 362(d)(1),
24 and, with respect to a stay of an act against property, the
25 debtor does not have equity in the property, § 362(d)(2)(A),
26 and the property is not necessary to an effective
27 reorganization. § 362(d)(2).

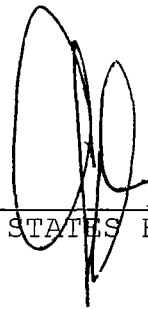
28 Because the chapter 7 trustee filed a no asset report, the

1 motion will be granted as to the trustee. As to the debtor,
2 she has equity in the property in excess of \$9,000. As such,
3 the motion requesting relief from the automatic stay as against
4 the debtor shall be denied without prejudice.

5 Additionally, any attorney's fees and costs incurred in
6 connection with this motion shall not be charged to the debtor
7 because all of the requirements of 11 U.S.C. § 506(b) are not
8 satisfied. Although movant holds an allowed secured claim and
9 is oversecured, movant's request for attorneys' fees and costs
10 is not reasonable under the circumstances. In light of the
11 fact that movant's motion was unnecessary, the court denies
12 movant's requests for attorney's fees and costs. The debtor is
13 deemed to be the prevailing party for purposes of California
14 Civil Code § 1717.

15 An appropriate order will issue.

16 Dated: October 27, 2005

17
18 
19 _____
20 UNITED STATES BANKRUPTCY JUDGE
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Jessica Morales
712 W Onstott Road #141
Yuba City, CA 95991

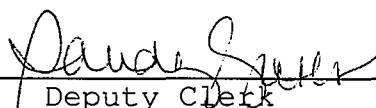
Daryl Lander
4120 Cameron Park Drive #102
Cameron Park, CA 95682

Kenneth Sanders
P.O. Box 214205
Sacramento, CA 95821

Mortgage Electronic Registration Systems, Inc.
c/o Alvarado, Shapiro & Wilson LLP
4 Park Plaza, Suite 1230
Irvine, CA 92614

Office of the United States Trustee
United States Courthouse
501 I St., Suite 7-500
Sacramento, CA 95814

Dated: 10/31/05


Deputy Clerk